

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

EVE MARIE GOLDEN,

Plaintiff,

vs.

CITIMORTGAGE, INC., et al.,

Defendants.

ORDER

AND

MEMORANDUM DECISION

Case No. 2:10-CV-1249-TC

This matter comes before the court on Plaintiff Eva Marie Golden's Motion for Rule 60(b)(4) Relief from the court's order granting Defendants' motion to dismiss with prejudice. Ms. Golden contends that the court did not have jurisdiction to issue the order and so the order is void and must be vacated. The Defendants have not filed an opposition brief, and the time for doing so has passed.

Under Rule 60(b)(4), "the court may relieve a party or its legal representative from a final judgment, order, or proceeding [if] . . . the judgement is void." Ms. Golden contends that her Notice of Intent to voluntarily dismiss the case without prejudice under Federal Rule of Civil Procedure 41(a)(1)(A) (see Jan. 20, 2011 Notice of Voluntary Dismissal (Docket No. 10)) predated the court's order of dismissal with prejudice and so deprived the court of jurisdiction to issue the dismissal order. The court agrees.

Rule 41 permits a plaintiff to "dismiss an action without a court order by filing: a notice of dismissal before the opposing party serves either an answer or a motion for summary

judgment,” the effect of which is dismissal without prejudice. Fed. R. Civ. P. 41(a)(1). Ms. Golden did just that, and her action divested the court of jurisdiction.

Accordingly, the court GRANTS Ms. Golden’s Motion for Rule 60(b)(4) Relief (Docket No. 14). The court’s February 10, 2011 Order dismissing the case with prejudice (Docket No. 12) is hereby VACATED. The Clerk of the Court is directed to VACATE THE JUDGMENT dismissing Ms. Golden’s case with prejudice.

SO ORDERED this 10th day of March, 2011.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
District Court Judge